

SETTLEMENT AGREEMENT AND  
MUTUAL GENERAL RELEASE

CITY OF EL SEGUNDO

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereinafter referred to as "Agreement") is made and entered into on this 1st day of February, 1994, by and among the following parties: Municipal Resource Consultants, a partnership of corporations ("MRC") and THE CITY OF EL SEGUNDO, a Municipal Corporation, ("City"), with reference to the following facts:

## RECITALS

A. City and MRC entered into a consultant services agreement regarding the utility users tax dated February 25, 1991. This agreement authorized MRC to conduct audits of the El Segundo utility user tax. Under the agreement, MRC is entitled to twenty five percent (25%) of all deficiencies recovered for eligible prior periods as a result of its efforts.

B. MRC had notified City of potential underpayment of gas user taxes at the Chevron refinery in El Segundo. As a result of this notification, City investigated the use of gas at the Chevron refinery and determined that a potential underpayment of gas user tax may have occurred. However, Chevron disputed any assertion of an underpayment of gas user taxes and in fact asserted that an overpayment of gas user taxes had been made and that a refund was due.

C. Discussions between Chevron and City isolated the following legal issues as points of contention concerning the gas users tax:

i. The statute of limitations -- Chevron contended that a strict three-year statute of limitations regarding recovery of unpaid taxes applied. The City took the position that Chevron's unwillingness to cooperate with MRC in an audit should extend the statute of limitations beyond three years.

ii. Feed Stock gas -- Chevron took the position that the ordinance applied only to utility use of gas and that "feed stock" use (i.e., use of natural gas to create hydrogen for use in manufacturing petroleum products) was not a utility use since it involved the gas becoming a component part of a manufactured product. The City contends that the ordinance applies to gas use generally and that it was not limited to use for utility purposes only.

iii. Cogeneration -- Chevron objected to paying a tax both on the gas-consumed and on the electricity generated. It contended that this was double taxation prohibited by California law. The City contends that the use of gas and the use of electricity, even when linked by the co-generation process, were sufficiently distinct as to avoid being classified as double taxation under the cases which define that term.

iv. Equity Gas -- It was Chevron's position that equity gas was not taxable because the ordinance anticipated a sales transaction and provided no method for valuing such gas. The City's position was that no distinction was made in the ordinance regarding the origin of gas used within the City. Since Chevron itself valued the gas for internal accounting purposes, there was an easily available and reasonable method for determining the amount of the tax.

v. Valuation of Equity Gas -- As indicated above, Chevron was concerned about the methodology used to value equity gas for purposes of calculating any utility users tax. The City agreed that Chevron's internal accounting methodology which values gas based upon prices prevalent at the California border was sufficiently related to the market value of the gas as to be reasonable and acceptable.

vi. Penalties -- Chevron argued that it should not be subject to any delinquency penalties due to the fact that the ordinance was vague and ambiguous with respect to various issues raised above and that the City had not asserted any assessment of the tax, which therefore could not yet be delinquent. The City asserted that the ordinance was clear and the tax clearly due on both equity and feed stock gas and that therefore penalties could be assessed.

Based upon its position as articulated above, Chevron contended that it overpaid its tax and was due a credit of \$503,217. not including interest. Chevron filed a written claim under El Segundo Municipal Code § 3.24.130 for refund of this amount. City asserted that Chevron owed unpaid gas users tax of three-million four-hundred-thirty-one-thousand six-hundred dollars (\$3,431,600).

D. City and Chevron agreed to settle their dispute over gas user tax liabilities by having Chevron pay the sum of eight hundred thousand dollars (\$800,000) to City as satisfaction for any alleged gas user tax liabilities. City agreed to make changes to clarify the scope and intent of its ordinance and entered into an administrative tax agreement pursuant to El Segundo Municipal Code § 3.24.100(c) to avoid future disputes by having Chevron pay the sum of one hundred and fifty thousand dollars (\$150,000) per year to satisfy its gas users tax liability. This sum was agreed upon because it represented the average tax which would have been assessed over the years since the gas users tax was adopted for gas used for utility (as opposed to feed stock) purposes at the refinery.

E. As a result of MRC's contract with El Segundo and of MRC's efforts to identify underpayment of the gas user tax by Chevron, MRC is entitled to twenty five percent (25%) of the amounts recovered by City from Chevron.

AGREEMENT

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CITY OF EL SEGUNDO

NOW, THEREFORE, in consideration of the terms, covenants, conditions and agreements set forth hereinbelow, MRC and City agree as follows:

1. Within fifteen (15) days of payment to City by Chevron of the sum of eight hundred thousand dollars (\$800,000) in unpaid utility user taxes pursuant to City's Settlement Agreement with Chevron, City agrees to pay the sum of two hundred thousand dollars (\$200,000) to MRC as satisfaction in full of any and all amounts due MRC arising from recovery of alleged gas user tax liabilities (including penalties) from Chevron under El Segundo Municipal Code § 3.24.040 from the inception of said tax through May 30, 1993 resulting from MRC's efforts. Said \$200,000 payment to MRC shall not be subject to any future adjustment, refund, or other change; nor shall it be affected in any way by any provision of the Settlement Agreement and Mutual General Release or the Administrative Agreement Regarding Gas Tax Collection between City and Chevron, nor by the performance, failure of performance, or negligent performance by either party under such agreements.

2. MRC did not participate in the negotiations of the Settlement Agreement/Mutual General Release or the Administrative Agreement Regarding Gas Tax Collection between City and Chevron. MRC's execution of this agreement therefore shall not be

construed as a recommendation of either said agreement between City and Chevron, nor does it represent an endorsement of any provisions, or legal contentions or theories, contained in either said agreement between City and Chevron.

3. MRC, for and on behalf of itself and its predecessors, successors and assigns, does fully and forever remise, release and discharge City, its employees, agents and representatives of and from any and all causes of action, damages, claims, demands, agreements, contracts, covenants, torts, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, accounts, damages, losses and liabilities of whatever kind or nature, in law, equity, or otherwise, whether known or unknown, which against it they have, may have had, now have, or which any of their heirs, executors, administrators, predecessors, successors, assigns, agents or other representatives hereafter can, shall or may have for or by reason of any matter, cause or thing whatsoever to and including the date hereof, which may relate to or arise out of MRC's efforts to identify delinquent gas user tax from activities at Chevron refinery from the inception of the tax through May 30, 1993. However, this release is not intended to and shall not be construed as a release of the rights, obligations or duties of City under this Settlement Agreement and General Release.

4. City, for and on behalf of itself and its predecessors, successors and assigns, does fully and forever remise, release

and discharge MRC, its officers, former officers, employees, agents and representatives of and from any and all causes of action, damages, claims, demands, agreements, contracts, covenants, torts, actions, suits, causes of action, obligations, controversies, debts, costs, expenses, accounts, damages, losses and liabilities of whatever kind or nature, in law, equity, or otherwise, whether known or unknown, which against them or any of them it has, may have had, now has, or which any of its heirs, executors, administrators, predecessors, successors, assigns, agents or other representatives hereafter can, shall or may have for or by reason of any matter, cause or thing whatsoever to and including the date hereof, which may relate to or arise out of MRC's efforts to identify delinquent gas user tax from activities at the Chevron refinery from the inception of the tax through May 30, 1993. However, this release is not intended to and shall not be construed as a release of the rights, obligations or duties of MRC under this Settlement Agreement and General Release.

5. Each party hereto understands that the facts in respect of which this Agreement is made may be other than or different from the facts now believed by each party to be true; each party hereto accepts and assumes the risk that said facts, or any of them, may be different from the facts now believed by each party to be true; and each party hereto agrees that this Agreement and the release given in covenants made hereunder shall be and will remain in effect as fully, complete and legally binding, notwith-

standing the discovery or existence of any additional or different facts, or of any claims with respect thereto.

6. The parties hereto acknowledge that they have been advised by legal counsel and are familiar with the provisions of California Civil Code Section 1542, which are expressly understood by each party hereto to provide as follows:

\* \* \* \* \*

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

\* \* \* \* \*

The parties being aware of said code section hereby expressly waive any and all rights they may have thereunder, as well as under any other statute or common law principles of similar effect, except as to promises, covenants and warranties contained herein which shall survive. This Agreement shall act as release of all future claims for tax liability or refunds under the El Segundo gas users tax that may arise from the above-mentioned disputes, whether such claims are currently known, unknown,



foreseen or unforeseen. The parties understand and acknowledge the significance and consequences of the specific waiver of California Civil Code Section 1542 above, and hereby assume full responsibility for any injuries, damages, losses or liabilities they may hereafter incur from the above-mentioned dealings, disputes and litigation.

7. Each party hereto agrees to execute all documents which may be required to facilitate the provisions of this Agreement including deeds, conveyances or any other legally binding agreement which is consistent with the provisions contained herein and to make their best efforts to facilitate effecting the terms of this Agreement. Failure to do so shall be considered a material breach of this Agreement.

8. Each party hereto represents and warrants that he has full power to enter into this Agreement, and that the individual, if any, executing this Agreement on his, her or its behalf is fully empowered to bind it and fully authorized to enter into this Agreement. Each party represents and warrants that he has not assigned, encumbered or in any manner transferred all or any portions of the claims, causes of action, or other matters released by him herein. Each party hereto acknowledges and agrees that the warranties and representations made by each party in this paragraph are each an essential and material term of this Agreement, without which the consideration given herein would not have been given by any of them.

9. Each party hereto acknowledges and represents that, in effecting and executing this Agreement, it has received from legal counsel full legal advice as to its legal rights; that it or the individual executing this Agreement on its behalf, has read all of this Agreement and fully understands its content and legal effect.

10. Each party hereto acknowledges and agrees that this is a compromise settlement of the hereinabove mentioned action, which is not in any respect to be deemed, construed or treated as an admission or a concession of any liability whatsoever by any party hereto, including any person, firm, partnership or corporation for any purpose whatsoever.

11. Each party hereto acknowledges and agrees that no representation, statement or promise not expressly set forth herein has been made by or on behalf of any of the other parties hereto or by any of its agents, servants, employees, representatives or attorneys, and that no representations, statements or promises that are not expressly set forth herein have been made or relied on by any party hereto.

12. All of the covenants, releases and agreements herein contained in favor of the persons or entities released are made for the express benefit of each and all of the said persons or entities, each of whom has the right to enforce such provisions.

13. If any action in law or equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, which may be determined by the court in the same action or any separate action brought for that purpose in addition to any other relief to which the party may be entitled. Unless judgment goes by default, the attorney fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of all parties to fully compensate for all attorneys' fees paid or incurred in good faith.

14. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective partners, heirs, successors, representatives and assigns.

15. This Agreement is made and entered into in the State of California and shall be interpreted, applied and enforced under and pursuant to the laws of the State of California.

16. Each party has made such investigation of the facts pertaining to this Agreement and all matters pertaining hereto as he has determined necessary. This Agreement is intended to be final and binding between the parties hereto, regardless of any claims or misrepresentations, promises made without the intention

of performing them, mistakes of fact or law, or any other circumstances whatsoever, and under no circumstances shall any party be entitled to set aside this Agreement, either in whole or in part. In entering into this Agreement, each party assumes the risk of any misrepresentation, concealment or mistake, whether or not any party should subsequently discover or assert for any reason that any fact relied upon by such a party in entering into these releases was untrue, or that any fact was concealed from any party hereto, or that such party's understanding of the facts or of the law was incorrect or incomplete.

17. This Agreement constitutes the entire agreement of the parties with respect to the matters set forth herein, and no other agreement, statement or promise made by any party, or made to any employee, officer or agent of any party shall be valid or binding.

18. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by each of the parties hereto jointly and equally and shall not be interpreted against any party on the ground that the party drafted the agreement or caused it to be prepared.

19. If any term of this Agreement is held to be void or unenforceable, the remainder of the contract terms shall remain in full force and effect and shall not be affected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

"MRC"

MUNICIPAL RESOURCE  
CONSULTANTS, a California  
partnership

PARTNER: JOHN T. AUSTIN, INC.

By: John Austin

"CITY"

CITY OF EL SEGUNDO

By: Carl Jacobson

CARL JACOBSON  
MAYOR

ATTEST:

By: Cindy Mortesen

CINDY MORTESEN  
CITY CLERK

APPROVED AS TO FORM:

By: Leland C. Doolley

LELAND C. DOOLLEY  
CITY ATTORNEY